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ALEXANDER L. STEVAS  
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NO. 83-1100

IN THE

# Supreme Court of the United States

OCTOBER TERM 1983

GARY LEE BATTAGLIA,

*Petitioner,*

VS.

THE COMMITTEE OF BAR EXAMINERS OF  
THE STATE BAR OF CALIFORNIA,

*Respondent.*

On Petition for a Writ of Certiorari  
to the Supreme Court of  
The State of California

RESPONDENT'S BRIEF IN OPPOSITION

HERBERT M. ROSENTHAL  
TRUITT A. RICHEY, JR.  
RICHARD J. ZANASSI  
555 Franklin Street  
San Francisco, California 94102  
Telephone: (415) 561-8200  
*Attorneys for Respondent*

TRUITT A. RICHEY, JR.  
*Counsel of Record for Respondent*

## ISSUE PRESENTED

Whether denial by the California Supreme Court of the issuance of a writ of review to provide plenary review to a bar applicant whom the Committee of Bar Examiners, after appropriate hearing and with decision, has refused on moral character grounds to certify for admission to practice law, constitutes a denial of due process and equal protection, even though the court in the exercise of its judicial discretion following review of the record before it may have determined that no substantial issues were presented that required full briefing on the merits, oral argument and a written opinion.

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GARY BATTAGLIA,

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THE COMMITTEE OF BAR EXAMINERS OF  
THE STATE BAR OF CALIFORNIA,

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RESPONDENT'S BRIEF IN OPPOSITION

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Respondent, the Committee of Bar  
Examiners of The State Bar of California,  
respectfully requests that this court  
deny the petition for writ of certiorari  
seeking review of the California Supreme  
Court determination in Battaglia v.

State Bar of California,  
Committee of Bar Examiners (Cal. Sup.  
Ct., Docket No. S.F. 24593).

The California Supreme Court without opinion denied petitioner's petition for writ of review by order filed September 8, 1983, and subsequently denied petitioner's petition for rehearing by order filed on October 5, 1983.

#### RESPONDENT'S STATEMENT

In California admission to the practice of law is an exercise of one of the inherent powers of the California Supreme Court. Merco Constr. Engineers, Inc. v. Municipal Court, 21 Cal.3d 724, 727-729 (1978); Stratmore v. State Bar, 14 Cal.3d 887, 889 (1975); Brydonjack v. State Bar, 208 Cal. 439, 443 (1929); People v. Turner, 1 Cal. 143, 150 (1850); see California Constitution, article VI, section 1.



To assist the Supreme Court in the administration of the admission process, the Board of Governors of the State Bar, pursuant to California Business and Professions Code sections 6046 and 6046.5, appoints a Committee of Bar Examiners. This committee, as the administrative arm of the California Supreme Court in admissions matters, has primary responsibility for the bar examination process. In re Admission to Practice Law, 1 Cal.2d 61, 67 (1934); Chaney v. State Bar, 386 F.2d 962, 966 (1967).

In that regard, the Committee has the power to (a) examine all applicants for admission; (b) administer the requirements for admission to practice; and (c) certify to the California Supreme Court for admission those applicants who fulfill the requirements. California Business & Professions Code

sections 6060 and 6064; see also sections 6060.5 and 6062; California Rules of Court, rule 952(c); rule 1, section 1, Rules Regulating Admission to Practice Law in California. One of the requiremlents for admission to practice law is that the applicant be of good moral character. California Business & Professions Code section 6060(b). All acts of the Committee are subject to review by the California Supreme Court. California Rules of Court, rule 952(c). The Committee's actions are mere recommendations and are not binding on the court. Siegel v. Committee of Bar Examiners, 10 Cal.3d 156, 173 (1973); Greene v. Committee of Bar Examiners, 4 Cal.3d 189, 191 (1971); Bernstein v. Committee of Bar Examiners, 69 Cal.2d 90, 97 (1968).

Upon its independent review, the court may uphold the administrative determination of the Committee, Greene v. Committee of Bar Examiners, 4 Cal.3d 189 (1971), or its may reverse that determination, Siegel v. Committee of Bar Examiners, 10 Cal.3d 156 (1973).

In California the trial of bar applicant moral character matters is conducted before a hearing panel of the State Bar Court. Rule X, section 102(e) of the Rules Regulating Admission to Practice Law in California (Rules Regulating Admission). The establishment of State Bar Court hearing panels are provided for in the Rules of Procedure of The State Bar of California (Rules of Procedure). The specific Rules of Procedure applicable to bar admission matters are delineated

in Rule X, section 102(e) of the Rules Regulating Admission.\*

At the hearing panel "trial" the applicant may be represented by counsel (as petitioner was), may present evidence of his moral character, and may confront and cross-examine adverse witnesses. Documentary evidence is introduced and a transcript is made of the proceedings. Thereafter, the hearing panel makes findings of fact and a recommendation to the Committee of Bar Examiners as to whether the applicant has the requisite moral character. The findings and recommendation of the hearing panel are

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\* The Rules Regulating Admission are published in volume 23, West's Annotated California Codes (Rules of Court) part 2, page 478, et seq. The Rules of Procedure are published in volume 23, West's Annotated California Codes (Rules of Court), part 2, page 590, et seq.

binding upon all parties unless within 45 days the applicant, the State Bar examiners or the Committee itself elects to have a hearing before the Committee. Rule X, section 103, Rules Regulating Admission. The hearing before the Committee consists of oral argument on the record adduced before the hearing panel and any memoranda timely filed. In addition, the applicant may make a statement under oath and "will be required to respond under oath to questions from the Committee." Rule X, section 103(f)(2).

Petitioner passed the California bar examination in July 1978. Petitioner has subsequently twice been denied certification to practice law by the Committee of Bar Examiners of The State Bar of California.

Petitioner's first moral character proceeding commenced soon after he

passed the bar examination in 1978. In June 1979, after extensive hearings before a hearing panel of the State Bar Court, the hearing panel concluded that the "applicant is not now an honest, fair person of candor and trustworthiness who will observe the fiduciary responsibility of an attorney under the laws of the State of California, and the United States, or who has respect for the rights of others or in the judicial process."

On December 8, 1979, the full Committee of Bar Examiners of the State Bar of California, upon the application of petitioner, reviewed the record in that first proceeding and recommended that his admission to practice law be denied with the usual time for reapplication shortened from two years to one year. Rules Regulating Admission, rule X, section 104(a). Petitioner did not

seek review of that decision. The Committee's decision was based substantially on findings that petitioner made untruthful statements to State Bar investigators concerning his knowledge of and meetings with persons involved in illegal activities.

In January 1981, petitioner applied for certification a second time. However, in March 1980, petitioner had filed for bankruptcy in the United States District Court. In order to determine if petitioner was now rehabilitated, and because of events occurring and brought to light in the bankruptcy proceeding, a further investigation of petitioner's moral character was undertaken. There was a finding in the bankruptcy proceeding that certain credit card charges of petitioner were nondischargeable because "[petitioner] had no reasonable

belief that he could pay for the purchases at a specified time." The credit card debts were incurred in 1978. However, they were not known of by the State Bar until 1981, and were not considered by the State Bar until these second proceedings in 1982-1983.

On November 17, 1982, after extensive hearings, the hearing panel filed its findings and decision in which it recommended that petitioner be certified to practice law. However, in arriving at its recommendation it was specifically stated that "this panel does not condone the conduct of Mr. Battaglia during the period mid-1976 through 1978. The panel has concluded, with considerable difficulty, that Applicant is rehabilitated." (Emp. added.)

The volunteer examiner for the State Bar sought review of the hearing



panel recommendation, and on February 11, 1983, the Committee heard the testimony of petitioner and the oral arguments of counsel for both parties.

Pursuant to petitioner's motion, the Committee reopened the hearing on April 30, 1983 for the exclusive purpose of considering portions of the record not before the Committee during the February 1983 session.

On May 20, 1983, the Committee filed its decision. It adopted Findings 1 through 21 in the Findings of Fact and Recommendation of the hearing panel (issued November 27, 1982), and further found that petitioner failed to demonstrate good moral character as required by Business and Professions Code sections 6060 and 6062, and rule X of the Rules Regulating Admission to Practice Law in

California. The Committee also found, "the applicant was less than candid when testifying before the Committee on February 11, 1983."

On July 22, 1983, petitioner filed a petition for review with the California State Supreme Court. The petition was denied without opinion by the court on September 8, 1983. Subsequently, on September 21, 1983, petitioner filed a petition for reconsideration which was denied by the court on October 5, 1983.

Petitioner's petition for writ of certiorari to this court followed.

#### REASONS WHY THE WRIT SHOULD BE DENIED

A review on writ of certiorari is not a matter of right, and will be granted only when there are special and important reasons therefore. Rule 17,

Rules of the Supreme Court of the United States.

Rule 17 sets forth non-exclusive guidelines that indicate the character of the reason that will be considered by the court in determining whether a writ of certiorari will be granted. The present case clearly does not fall within those guidelines.

Rule 17.1(a) is inapplicable because this particular section pertains to decisions by the federal court of appeals.

Likewise, the California Supreme Court has not decided a federal question in a way that conflicts with the decision of another state court or a federal court of appeals. Rule 17.1(b) is not applicable.

Finally, this case does not come within the guidelines of rule 17.1(c), although petitioner asserts that the

decision of the California Supreme Court to deny him admission to the practice of law denied him due process and the equal protection of the law. It is the position of the Committee that petitioner was not denied due process or equal protection. The decision of the Committee to deny certification to petitioner was made after petitioner was accorded all constitutional rights.

Petitioner incorrectly asserts that by refusing to issue its writ of review the Supreme Court of California refused to provide judicial review of "an administrative agency's" denial of his certification to practice law. This is erroneous because the Supreme Court of California considers the merits of every petition for review filed by unsuccessful bar applicants. It is only those petitions which after

analysis are perceived by the court to not involve questions of substance requiring plenary consideration, with full briefing on the merits and oral argument, that the court resolves the merits of the petition on the basis of the preliminary papers by order denying the issuance of the court's writ.\* See Konigsberg v. State Bar of California, 353 U.S. 252, 254-258, 77 S.Ct. 722, 723-726 (1957).\*\*

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\* This practice is, of course, not unlike this court's summary disposition on the merits of both appeals and certiorari cases not perceived to present questions of substance. See rules 16.7 and 23.1, Rules of the Supreme Court of the United States.

\*\* As this court noted in Konigsberg, 353 U.S. at 254, 77 S.Ct. at 724: "In considering actions of the Committee of Bar Examiners the California Supreme Court exercises original jurisdiction and is not restricted to the limited review made by an appellate court. For

[Footnote cont'd on next page.]

California has long exceeded the standard of due process required in bar admission matters as set forth in Willner v. Committee on Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175,

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[Footnote cont'd. from preceding page.]

example, that court declared in In re Lacey, 11 Cal.2d 699, at page 701, 81 P.2d 935, at page 936: 'That this court has the inherent power and authority to admit an applicant to practice law in this state or to reinstate an applicant previously disbarred despite an unfavorable report upon such application by the Board of Bar Governors of the State Bar, we think is now well settled in this state. ... The recommendation of the Board of Bar Governors is advisory only..... [T]he final determination in all these matters rests with this court, and its powers in that regard are plenary and its judgment conclusive.'" See also: California Business & Professions Code, section 6066; California Rules of Court, rule 952(c) [formerly rule 59(b) as discussed in Konigsberg]; Rules Regulating Admission to Practice Law in California, rule I, sections 1 and 11 (see Cal. Bus. & Prof. Code (West) foll. § 6068).

1181 (1963), which held that a bar applicant was denied due process when he was denied admission to the bar by the court without a hearing on the charges against him before either the committee or the court. A concurring opinion by Mr. Justice Goldberg stated:

"The constitutional requirements in this context may be simply stated: in all cases in which admission to the bar is to be denied on the basis of character, the applicant, at some stage of the proceedings prior to the denial, must be adequately informed of the nature of the evidence against him and be accorded an adequate opportunity to rebut this evidence." 373 U.S. at 107, 83 S.Ct. at 1182.

In the present proceeding it is clear that prior to the California Supreme Court denial of his admission to practice law, petitioner was accorded several days of hearing, was represented by very competent counsel,

knew of all the evidence presented against him, and presented a substantial amount of evidence on his own behalf.

The hearing panel filed a decision with findings, and concluded on the basis of this record before it that petitioner was rehabilitated, and recommended his certification for admission. However, the panel's conclusion as to petitioner's rehabilitation was "reluctant."

The Committee had the same entire record before it. In addition, petitioner testified before the Committee and answered questions under oath. The Committee filed a unanimous decision in which it adopted 21 of the findings of the hearing panel. However, the Committee found that petitioner in his testimony before it was less than



candid.\* Petitioner's lack of candor was the same deficiency of which he was found culpable of in the earlier moral character proceeding.

The Committee of Bar Examiners and The State Bar of California act as the administrative arm of the California Supreme Court in matters pertaining to the admission and discipline of lawyers. Chronicle Publishing Co. v. Superior

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\* State Bar Court hearing panel referees sit principally in attorney discipline matters. Their exposure to admission moral character matters is often not extensive. On the other hand, the Committee of Bar Examiners reviews every moral character case, and is certainly more experienced in concluding whether on a given set of findings an applicant is qualified to be certified. Indeed, the Committee and not the hearing panel is charged by statute with making the State Bar's recommendation to the Supreme Court as to whether an applicant is morally qualified for admission. Business & Professions Code, section 6046. This is so whatever weight is given to the factual findings of the hearing panel.

Court, 54 Cal.2d 548, 566 (1960). The proceedings before the State Bar Court and the Committee of Bar Examiners were actually proceedings before the California Supreme Court. The State Bar Court and the Committee decisions are only recommendations. The actual decision as to whether an applicant is to be admitted is made by the Supreme Court, although the recommendations of the Committee are entitled to great weight.

In arriving at its determination the Supreme Court may use any or all of the State Bar record. It is always available for the court. However, we are aware of no rule of this court or any other court that would require the Supreme Court of California to grant plenary review with full briefing, oral argument and written opinion to each and every applicant who, because of

moral character or for whatever other reason, is denied certification to practice law by the Committee of Bar Examiners. There was no denial of due process.

Petitioner's contentions regarding denial to him of equal protection are equally without merit. The same contentions could be made by anyone who is denied certiorari by this court or review by any other court where such review is discretionary. If, after appropriate review of that part of the record as it deems necessary, the Supreme Court of California believes the recommendation of the Committee regarding a bar applicant is wrong, it will order review with the resulting briefing, oral argument and opinion. Petitioner's presentation did not persuade the California Supreme Court he was in the category of wronged

applicants, and his petition was treated in the same manner as other applicants who have failed to convince the court that the Committee's recommendation was wrong. This does not violate the Constitution.

#### CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Dated: February 9, 1984

Respectfully submitted,

HERBERT M. ROSENTHAL  
TRUITT A. RICHEY, JR.  
RICHARD J. ZANASSI

Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned, a member of the bar of the Supreme Court of the United States, certifies that three copies of the RESPONDENT'S BRIEF IN OPPOSITION have been served on counsel of record for the party herein by mailing same, first-class postage prepaid, this the 10th day of February 1984, as follows:

Alvin H. Goldstein, Jr.  
Goldstein & Phillips  
Suite 2280  
Three Embarcadero Center  
San Francisco, California 94111

All parties required to be served have been served.

*Truitt A. Richey, Jr.*  
TRUITT A. RICHEY, JR.

555 Franklin Street  
San Francisco, California 94102  
(415) 561-8200